

(2) The definition of consent stock may be illustrated by the following example:

*Example.* If in the case of the X Corporation, a personal holding company, there is only one class of stock outstanding, it would all be consent stock. If, on the other hand, there were two classes of stock, class A and class B, and class A was entitled to 6 percent before any distribution could be made on class B, but class B was entitled to everything distributed after class A had received its 6 percent, only class B stock would be consent stock. Similarly, if class A, after receiving its 6 percent, was to participate equally or in some fixed proportion with class B until it had received a second 6 percent, after which class B alone was entitled to any further distributions, only class B stock would be consent stock. The same result would follow if the order of preferences were class A 6 percent, then class B 6 percent, then class A a second 6 percent, either alone or in conjunction with class B, then class B the remainder. If, however, class A stock is entitled to ultimate participation without limit as to amount, then it, too, may be consent stock. For example, if class A is to receive 3 percent and then share equally or in some fixed proportion with class B in the remainder of the earnings or profits distributed, both class A stock and class B stock are consent stock.

(b) *Preferred dividends.* (1) The term *preferred dividends* includes all fixed amounts (whether determined by percentage of par value, a stated return expressed in a certain number of dollars per share, or otherwise) the distribution of which on any class of stock is a condition precedent to a further distribution of earnings or profits (not including a distribution in partial or complete liquidation). A distribution, though expressed in terms of a fixed amount, is not a preferred dividend, however, unless it is preferred over a subsequent distribution within the taxable year upon some class or classes of stock other than one on which it is payable.

(2) The definition of preferred dividends may be illustrated by the following example:

*Example.* If, in the case of the X Corporation, there are only two classes of stock outstanding, class A and class B, and class A is entitled to a distribution of 6 percent of par, after which the balance of the earnings and profits are distributable on class B exclusively, class A's 6 percent is a preferred dividend. If the order of preferences is class A \$6

per share, class B \$6 per share, then class A and class B in fixed proportions until class A receives \$3 more per share, then class B the remainder, all of class A's \$9 per share and \$6 per share of the amount distributable on class B are preferred dividends. The amount which class B is entitled to receive in conjunction with the payment to class A of its last \$3 per share is not a preferred dividend, because the payment of such amount is preferred over no subsequent distribution except one made on class B itself. Finally, if a distribution must be \$6 on class A, \$6 on class B, then on class A and class B share and share alike, the distribution on class A of \$6 and the distribution on class B of \$6 are both preferred dividends.

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## BANKING INSTITUTIONS

### RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

#### § 1.581-1 Banks.

(a) In order to be a bank as defined in section 581, an institution must be a corporation for federal tax purposes. See §301.7701-2(b) of this chapter for the definition of a corporation.

(b) This section is effective as of January 1, 1997.

[T.D. 8697, 61 FR 66588, Dec. 18, 1996]

#### § 1.581-2 Mutual savings banks, building and loan associations, and cooperative banks.

(a) While the general principles for determining the taxable income of a corporation are applicable to a mutual savings bank, a building and loan association, and a cooperative bank not having capital stock represented by shares, there are certain exceptions and special rules governing the computation in the case of such institutions. See section 593 for special rules concerning reserves for bad debts. See section 591 and §1.591-1, relating to dividends paid by banking corporations, for special rules concerning deductions for amounts paid to, or credited to the accounts of, depositors or holders of withdrawable accounts as dividends. See also section 594 and §1.594-1 for special rules governing the taxation of a mutual savings bank conducting a life insurance business.

(b) For the purpose of computing the net operating loss deduction provided in section 172, any taxable year for